

ESTTA Tracking number: **ESTTA171111**

Filing date: **10/26/2007**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Notice of Opposition

Notice is hereby given that the following party opposes registration of the indicated application.

Opposer Information

Name	Waterford Wines (Proprietary) Limited
Granted to Date of previous extension	10/31/2007
Address	Blaauklippen Road Stellenbosch, SOUTH AFRICA
Attorney information	Evan Gourvitz Fross Zelnick Lehrman & Zissu, P.C. 866 United Nations Plaza New York, NY 10017 UNITED STATES egourvitz@frosszelnick.com, jmargiotta@frosszelnick.com Phone:2128135900

Applicant Information

Application No	78972993	Publication date	07/03/2007
Opposition Filing Date	10/26/2007	Opposition Period Ends	10/31/2007
Applicant	Waterford Wedgwood Plc Kilbarry Waterford, IRELAND		

Goods/Services Affected by Opposition

Class 033. All goods and services in the class are opposed, namely: ALCOHOLIC BEVERAGES, NAMELY, BEER, WINE, DISTILLED LIQUORS, DISTILLED SPIRITS, APERITIFS, COGNAC, WINE COOLERS, WHISKEY, VODKA, GIN, VERMOUTH, TEQUILA, SHERRY, SCHNAPPES, RUM, SAMBUCA, PREPARED WINE COCKTAILS, PREPARED ALCOHOL COCKTAILS AND ALCOHOLIC MALT COOLERS
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Grounds for Opposition

Priority and likelihood of confusion	Trademark Act section 2(d)
Other	Lack of bona fide intent to use mark on applicant's goods.

Mark Cited by Opposer as Basis for Opposition

U.S. Application/Registration No.	NONE	Application Date	NONE
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Registration Date	NONE
Word Mark	WATERFORD
Goods/Services	alcoholic beverages

Attachments	07 10 26 - Notice of Opposition (F0122702).PDF (4 pages)(93723 bytes)
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Signature	/John Margiotta/
Name	John Margiotta
Date	10/26/2007

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In the Matter of Application Serial No. 78-972,993
Published in the Official Gazette on July 3, 2007

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WATERFORD WINES (PTY) LTD.,	:	
	:	
Opposer,	:	
	:	NOTICE OF OPPOSITION
- against -	:	
	:	
WATERFORD WEDGWOOD PLC,	:	
	:	
Applicant.	:	
-----X		

Waterford Wines (PTY) Ltd., a corporation organized and existing under the laws of South Africa with an address of P.O. Box 635, Stellenbosch 7599, Cape, South Africa, believes that it will be damaged by the issuance of a registration for the mark WATERFORD applied for in Application Serial No 78-972,993, filed September 13, 2006, for “alcoholic beverages, namely, beer, wine, distilled liquors, distilled spirits, aperitifs, cognac, wine coolers, whisky, vodka, gin, vermouth, tequila, sherry, schnappes, rum, sambuca, prepared wine cocktails, prepared alcohol cocktails and alcoholic malt coolers” in International Class 33 and therefore opposes the same. As grounds for the opposition, Waterford Wines (PTY) Ltd. (“Opposer”), by its attorneys Fross Zelnick Lehrman & Zissu, P.C., alleges as follows:

1. Since at least as early as 1999, Opposer, a manufacturer and wholesaler of wines, has been using marks including the term WATERFORD to offer for sale and sell wines in the United States. These marks, referred to herein as the “WATERFORD Marks,” have become synonymous with Opposer for wines and serve to designate exclusively Opposer’s wines.

2. The WATERFORD Marks have acquired enormous value, and have become recognizable to the public and trade as identifying and distinguishing Opposer exclusively and uniquely as the source of the products Opposer offers under or bearing the marks. This recognition is due to Opposer's sales of goods bearing the marks, and to the general reputation of the wine associated with the marks.

3. On September 13, 2006, Applicant Waterford Wedgwood PLC, a company existing under the laws of Ireland, with an address of Kilbarry, Waterford, Ireland, filed intent-to-use application Serial No. 78-972.993 to register the WATERFORD mark for use in connection with for "alcoholic beverages, namely, beer, wine, distilled liquors, distilled spirits, aperitifs, cognac, wine coolers, whisky, vodka, gin, vermouth, tequila, sherry, schnappes, rum, sambuca, prepared wine cocktails, prepared alcohol cocktails and alcoholic malt coolers" ("Applicant's Goods") in International Class 33.

4. Applicant's filing date for the application is long after Opposer's date of first use of its WATERFORD Marks in connection with the sale of wine.

5. Applicant had actual knowledge of Opposer's prior rights to and interest in the WATERFORD Marks before seeking to register the mark WATERFORD in connection with Applicant's Goods.

6. The registration of Applicant's mark in connection with Applicant's Goods is inconsistent with Opposer's common-law rights in the WATERFORD Marks in connection with its sale of wines., and would destroy Opposer's investment and goodwill in those marks.

CLAIM FOR RELIEF UNDER SECTION 2(d)

7. Opposer repeats and re-alleges each and every allegation contained in paragraphs 1 through 6 as if fully set forth herein.

8. Opposer's WATERFORD Marks, when used in connection with the sale of alcoholic beverages, are exclusively associated with Opposer and its predecessors and licensees, and have been used continuously by Opposer and its predecessors and licensees since a date prior to any date on which Applicant can rely.

9. By virtue of Opposer's and its predecessors' and licensees' longstanding use of the WATERFORD Marks, the goodwill associated with those marks, Applicant's registration of WATERFORD, a mark that when used on wines and any other goods falling into Class 33, is likely to cause confusion or cause mistake or to deceive the purchasing public into mistakenly believing that Applicant's goods offered under the WATERFORD mark originate from, come from, or otherwise are associated with Opposer, or that Applicant's goods offered under the WATERFORD mark are in some way connected with Opposer, would be in violation of Section 2(d) of the Lanham Act, 15 U.S.C. § 1052(d).

10. By reason of the foregoing, Opposer is likely to be harmed by registration of Application Serial No. 78-972,993 for the mark WATERFORD.

CLAIM FOR RELIEF FOR LACK OF BONA FIDE INTENT TO USE MARK ON
APPLICANT'S GOODS

11. Opposer repeats and re-alleges each and every allegation contained in paragraphs 1 through 10 as if fully set forth herein.

12. On information and belief, Applicant did not possess a bona fide intent to use the WATERFORD mark in commerce in connection with all of Applicant's Goods when it filed its intent-to-use application for the mark covering the many goods listed therein.

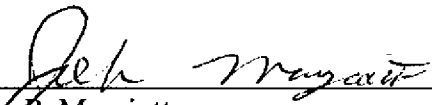
13. As a result of its lack of bona fide intent to use, Applicant's Application should be denied registration.

WHEREFORE, it is respectfully requested that this opposition be sustained and that the registration sought by Applicant in Application Serial No. 78-972,993 be denied.

The Trademark Trial and Appeal Board is hereby authorized to charge the opposition filing fee of \$300 to Opposer's counsel's deposit account No. 23-0825-0576900.

Dated: New York, New York
October 26, 2007

FROSS ZELNICK LEHRMAN
& ZISSU, P.C.

By: 
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